

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

In re:

Richard J. Hindin,

Debtor.

Case No. 09-19741-BFK

Chapter 11

U.S. TRUSTEE'S MOTION TO CONVERT OR DISMISS CHAPTER 11 CASE

Judy A. Robbins, the United States Trustee for Region 4, by counsel, moves this Court to convert this chapter 11 case to chapter 7, or in the alternative, dismiss the case.

On September 9, 2011 this Court entered an order confirming the Debtor's chapter 11 plan in this case. Dkt No. 173.

Section 1112(b)(1) of the Bankruptcy Code provides that the Bankruptcy Court shall convert a case to chapter 7 or dismiss the case if cause is established. Under § 1112(b)(4)(F) "cause" includes the "unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter." Federal Rule of Bankruptcy Procedure 2015(a)(5) requires debtors in a chapter 11 case to file quarterly reports, disclosing their quarterly disbursements for any quarter in which they are required to pay fees under 28 U.S.C. § 1930. Here, the Debtor was required to file quarterly disbursement reports for the 4th Quarter of 2014 through the 3rd Quarter of 2015. But the Debtor has not done so.

Currently, four quarterly reports are outstanding, making it impossible to determine how much the debtor has received or disbursed pursuant to the plan. Because the debtor has failed to file

these reports in compliance with the Bankruptcy Rules, cause exists to convert or dismiss this case.

In addition, it has been over four years since the plan was confirmed and the debtor has not filed a final report or decree. Under § 1112(b)(4)(M) “cause” includes the “inability to effectuate substantial consummation of a confirmed plan.” The filing of quarterly reports is necessary to show that the plan is progressing properly and moving for a final decree is a necessary step in completing the reorganization. The Debtor’s failure to complete these basic requirements suggests that it is unable to consummate its confirmed plan. Thus, cause exists to confirm or dismiss this case.

As the U.S. Trustee has established a *prima facie* case that causes exists to convert or dismiss this case, the burden shifts to the debtor to demonstrate that “unusual circumstances” exist to avoid the mandatory conversion or dismissal of his case. *See 11 U.S.C. § 1112(b)(2); In re Park*, 426 B.R. 811, 815 (Bankr. W.D. Va. 2010) (internal citations omitted) (“The moving party bears the initial burden of establishing a *prima facie* case that cause exists to dismiss or convert. Once a *prima facie* case establishing cause is made, then the burden shifts to the objecting party to either: (a) demonstrate that unusual circumstances exist that would make dismissal or conversion unfavorable to the creditors or estate; or (b) establish that a plan will be confirmed and that the act or omission that forms the basis for the aforementioned cause to dismiss or convert will be cured within a reasonable period of time.”). The U.S. Trustee is unaware of any unusual circumstances that would result in a finding that either conversion or dismissal of this case is not in the best interest of the creditors of the estate.

WHEREFORE, the United States Trustee respectfully requests that this Court enter an order converting this case to a case under chapter 7 of the Bankruptcy Code or dismiss this case.

December 18, 2015

JUDY A. ROBBINS
U.S. TRUSTEE, REGION 4

By: /s/ Bradley D. Jones
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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2015, a true copy of this motion and notice of motion and hearing were served on the following persons by first class U.S. mail, or by notice of electronic filing:

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